HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION No.25448 of 2005

Between:

Shaik Mahaboob Saheb & others. …Petitioners.

AND

Government of Andhra Pradesh represented by
its Principal Secretary, Environment, Forest,
Science & Technology Department,
Secretariat, Hyderabad & others. …Respondents.

:: O R D E R ::

Counsel for the Petitioners : Sri J.Janakirami Reddy

Counsel for Respondent Nos.1 to 4: Government Pleader for Forests

Counsel for Respondent No.5 : None.

8th FEBRUARY 2006

Per G.S.Singhvi, C.J.

In this petition filed in the name of public interest litigation, the petitioners have prayed for issuance of a direction to respondents No.1 to 4 to prevent non-forestry activities by the members of Vana Samrakshana Samithi (respondent No.5) and to

restrain them from cutting and transporting bamboos from Gundla Brahmeshwaram (G.B.M.) Forest Range, and Bandi Atmakur Forest Range.

The petitioners have averred that Bandi Atmakur Forest Range, G.B.M. Forest Range, Nandyal and part of Chelama Range of Nandyal Wild Life Forest Division, Kurnool District have been declared as Gundla Brahmeshwaram Wild Life Sanctuary and the same are crucial for wild life habitat. The State Government has issued orders for constitution of Vana Samrakshana Simithi for protection and development of degraded forests through joint forest management. However, District Forest Officer, Wild Life, Nandyal Division (respondent No.4) in collusion with respondent No.5 is causing damage to the reserve forest inasmuch as the members of respondent No.5 are allowed to indulge in the activity of felling trees and cutting and transporting the bamboos from the forest. They are freely allowed to enter the prohibited areas and undertake non-forestry activities in violation of the instructions issued by the State Government and the provisions contained in Section 26 of Indian Forest Act, 1927, Section 20 of Andhra Pradesh Forest Act and Section 17-A of Wild Life (Protection) Act, 1972. They have further averred that the activities of respondent No.5 are contrary to the directions given by the Supreme Court in I.A.No.548 in Civil Writ Petition No.202 of 1995. The petitioners have also made allegation that respondent No.5 is indulging in smuggling of bamboos from the forest area. They have referred to guidelines issued by respondent No.4 vide Rc.No.3229/2003-A3 dated 8-12-2003 and pleaded that the activities undertaken by respondent No.5 should be prevented for saving the forests.

In the counter affidavit filed by Sri Y.Srinivasa Reddy, Divisional Forest Officer, Nandyal Division, Nandyal, Kurnool District, on behalf of respondents 1 to 4, it has been averred that respondent No.5 is not being allowed to carry on any non-forestry activities in the reserve forest area. According to him, Divisional Forest Officer, Wild Life, has formed Singavaram Vana Samrakshana Samithi in December 2003 and the Samithi has been allotted compartment No.598 in Nandyal Extension-II Reserve Forest in Bandi Atmakur Range which is outside G.B.M. sanctuary area and the Samithi members are allowed to remove bamboo only from the earmarked forest area in accordance with G.O.Ms.No.13, Environment, Forest, Science & Technology (For-III) Department, dated 12-2-2002. In paragraphs 2 to 7 and 9 of his affidavit, Sri Y.Srinivasa Reddy has made the following averments:-

"In reply to para 1, it is submitted that, before forming Bamboo Vana Samrakshana Samithi in Nandyal (Wildelife) Division. Large number of people from villages adjoining Nallamala Forest falling in Nandyal (Wildlife) division used to go to the forest and resort to illegal cutting and transport the bamboo by different methods including head loads, cycles, bullock carts, donkeys etc. since several years. These bamboos were in turn sold to bamboo product makers spread over in entire division area including Nandyal town. In last few years such illegal removal by people has increased due to support from extremists and un-social elements. It has become serious law and order problem as these peoples livelihood was based on illegal bamboo cutting. The Forest Department tried to implement regulatory method of policing the forest but it met with very little success. Subsequently, Forest Department took pro-active role to solve the problem of such poor people in such a way that neither poor people are deprived of their livelihood nor department should lose the revenue. Hence, Forest Department held detailed meeting with such group of people and allowed the people to cut bamboos from specified area by charging subsidised rate fixed by the Government from time to time and to organise such people to form Bamboo VSS for each village wherever such poor people are dependent on the forest. The Conservator of Forests, Kurnool, 3rd respondent, his D.O.No.3699/2003/M4, dated 20-6-2003 submitted detailed proposal to Principal Chief Conservator of Forests, 2nd respondent, in this regard. The Principal Chief Conservator of Forests accorded permission to form such Bamboo Vana Samrakshana Samithi in such 30 villages as per G.O.Ms.No.13, Environment, Forest, Science & Technology (For-III) Department, dated 12-2-2002. The Vana Samrakshana Samithi formed as per G.O.Ms.No.13, Environment, Forest, Science & Technology (For-III) Department, dated 12-2-2002.

In reply to para 2 and 3 of affidavit, it is submitted that the total forest area in Gundla Brahmeshwaram (G.B.M.) and Bandi Atmakur Ranges as stated in affidavit do not fall in Gundla Brahmeshwaram (G.B.M) Sanctuary, but areas falling inside Gundla Brahmeshwaram (G.B.M) sanctuary and outside the sanctuary are as follows:-

Sl.No.	Range	Total Forest Area	SanctuaryArea	Outside Sanctuary Area
1.	G.B.M.	9,303.93 Ha.	8,226.93 Ha.	1077.60 Ha.
2.	Bandi Atmakur	10,117.69 Ha.	6,523.64 Ha.	3,594.05 Ha.

It is also submitted that the Divisional Forest Officer, Wildlife, Nandyal has formed Singavaram Vana Samrakshana Samithi in December, 2003 based on the resolution received from the village. Forest Department has allotted compartment No.598 in Nandyal Extension-II Reserve Forest in

Bandi Atmakur Range, which is outside Gundla Brahmeshwaram (G.B.M) sanctuary area. Singavaram Vana Samrakshana Samithi members are allowed to remove bamboo only from earmarked forest area as per G.O.Ms.No.13, Environment, Forest, Science & Technology (For-III) Department, dated
12-2-2002.

It is submitted that the Principal Chief Conservator of Forests, A.P., Hyderabad has also issued instructions vide Rc.No.24484/2003/V1, dated 16-11-2003 that the extraction of bamboo shall be carried out strictly in accordance with the Principal Chief Conservator of Forests instructions and no bamboo shall be extracted from the sanctuary area (protected areas). The forest area shall be selected after joint field inspection by the Vana Samrakshana Samithi members and the officials of Forest Department. The instructions issued by the Principal Chief Conservator of Forests vide Rc.No.24484/2003/V1, dated 16-11-2003, were communicated to all the Forest Range Officers for strict compliance. Accordingly bamboo Vana Samrakshana Samithi workers are not allowed to extract bamboo inside the sanctuary area. Hence the contention of the petitioners that the illegal cutting and transportation of bamboos and other forest produce from the sanctuary areas of Gundla Brahmeshwaram (G.B.M.) and Bandi Atmakur Range by Bamboo Vana Samrakshana Samithi is going on, is totally false and not correct. It is submitted that as and when any such incidents are noticed by any person who is not Vana Samrakshana Samithi member, cases are booked against such persons. Thus allowing illicit cutting of bamboos by the Bamboo Vana Samrakshana Samithi members in sanctuary area is far from the truth.

It is submitted that it is a fact that the prohibited area in G.B.M. Range and Bani Atmakur Range are notified as Wild Life Sanctuary vide G.O.Ms.No.229, Environment, Forest, Science & Technology (For.III) Department, dated 18-9-1990 communicated in Principal Chief Conservator of Forests, Andhra Pradesh, Hyderabad vide Rc.No.19212/ 1984/WL-1, dated 3-10-1990 (copy enclosed).

In reply to para 4, it is submitted that it is a fact that the Government in G.O.Ms.No.13, Environment, Forest, Science & Technology (For.III) Department dated 12-2-2002 has issued orders for constitution of “Vana Samrakshana Samithi” (Vana Samrakshana Samithi) for protection and development of degraded forests through joint forest management. It is submitted that the forest land is naturally bestowed with supporting of bamboo growth. The formation and working of Vana Samrakshana Samithi is aimed at development of local communities to protect, manage the forests more scientifically on a sustained basis. The extraction of bamboos by the Bamboo Vana Samrakshana Samithi members is being supervised by the Forest officials and the extraction is done by the Bamboo Vana Samrakshana Samithi members according to departmental extraction rules and sericultural principles. In addition to this, due to protection given by Vana Samrakshana

Samithi emmebrs, forest in the given area is improving. The forest land is not permitted to be diverted for other non-forestry purposes under existing law of Forest Conservation Act, 1980 as stated in the affidavit. The main aim of the said order is to involve the local people who depend on the forests for the purpose of protection and development of forests, which will lead to better forest protection and prevent smuggling of forest produce. The Government have also issued guidelines that no members of the "Vana Samrakshana Samithi" would involve in forest offences and granted incentives to the Vana Samrakshana Samithi members who apprehend the accused involved in forest offence cases. The Bamboo Vana Samrakshana Samithi members are extracting bamboos outside the sanctuary area but not from the prohibited and protected sanctuary areas as mentioned in the writ petition. The Bamboo Vana Samrakshana Samithi has been formed with a view to uplift the downtrodden community and to eke out their livelihood by extracting bamboos outside the sanctuary areas, manufacturing the bamboo products, and disposal by way of selling in local markets. The Bamboo Vana Samrakshana Samithi members area also paying subsidised rates of bamboo as fixed by the Government from time to time and as such the Government has gained revenue of Rs.10,15,638/- (from 12/2003 to 11/2005) through the Vana Samrakshana Samithi members……

In reply to para 6, it is submitted that the contention of the petitioners that 5th respondent is issuing unauthorised permits for transport of bamboo under the guise of finished product of bamboos is false and not correct. It is submitted that Forest Department in consultation with all Vana Samrakshana Samithis have devised one easy accounting method to keep account of bamboo extracted by them from the forest and products made out of such bamboos and transported or sold in the local market. Such procedure has been adopted to check any illegal removal of bamboo from forest by Vana Samrakshana Samithi members are not subjected to any harassment while using legally extracted bamboo from forest. Vana Samrakshana Samithis are maintaining such accounts themselves and returns are filed with Forest Department periodically. Fourth respondent has designed some permits in consultation with Vana Samrakshana Samithi members, which is used by Vana Samrakshana Samithi for transport of bamboo products. Such permits are kept at the disposal of Vana Samrakshana Samithi only so that as and when bamboo products are ready, Vana Samrakshana Samithi chairperson issues permit for transport of bamboo product and Vana Samrakshana Samithi gives periodical return of such permits to Forest Range Officer. By this arrangement not only Forest Department is benefited to control illegal removal of bamboo from forest but Vana Samrakshana Samithi members area also not harassed by forest or police officials when they transport bamboo product to far off places. It is submitted that 4th respondent has misused his official power by issuing guidelines in Rc.No.3229/2003/A3, dated 8-12-2003 is totally false and does not stand to reason. It is submitted that 4th respondent has not flouted the orders issued by the Government. It is

further submitted that 4th respondent is taking all possible preventive steps against the persons who are indulging in non-forestry activities in the prohibited and protected areas. It is also given to understand that due to formation of Bamboo Vana Samrakshana Samithi, the smuggling of bamboo is controlled and to dilute the scheme of Bamboo Vana Samrakshana Samithi, besides to make the poor Vana Samrakshana Samithi members to suffer, they have filed this writ petition. The Department have formed 12 Bamboo Vana Samrakshana Samithis for the benefit of poor people and for their livelihood who are living in the finge villages adjoining to forest in Nandyal Wild Life Division."

The aforementioned averments are supported by the documents i.e., D.O. letter No.3699/2003-M.4, dated 20-6-2003 issued by Conservator of Forests, Nandyal, G.O.Ms.No.13, dated 12-2-2002 issued by the Department of Environment, Forest, Science & Technology and Circular No.24484/2003/VI, dated 16-11-2003 issued by the Forest Department.

Sri M.Sunkanna, Chairperson of Vana Samrakshana Samithi, Bandi Atmakur Mandal, has also filed a separate affidavit to controvert the allegations contained in the petition. In paragraphs 3, 4 and 5 of his affidavit, Sri M. Sunkanna has averred as under:

"3. I respectfully submit in reply to paragraphs 4 to 6 of the writ affidavit that the allegation of the writ petitioners that there is collusion in between the 4th respondent and the 5th respondent and that the members of the 5th respondent are trespassing into the prohibited forest area and causing damage willfully in felling trees and cutting and transporting the bamboo from the forest with the active connivance of the 4th respondent also under the disguise of Vana Samrakshana Samithi is highly fallacious and incorrect. I humbly submit that the allegation that the members of the 5th respondent are freely entering into the prohibited areas and protected areas and indulging in non-forestry activities is equally incorrect and the said allegations besides being fallacious are unfounded and baseless. In fact the members of our Vana Samrakshana Samithi are extracting Bamboos outside the sanctuary, but not from prohibited or protected areas as alleged in the writ affidavit. I humbly submit that the Forest Department allotted compartment No.598 in Nandyal Extension-II Reserve Forest in Bandi Atmakur Range which falls outside Gundlabrahmeswaram sanctuary area.

4 . I humbly submit that the members of the 5th respondent Vana Samrakshana Samithi belong to Scheduled Tribe Community and they are down trodden and our members eke out the livelihood by way of extracting bamboos outside the prohibited areas and making Bamboo products and by way of sale of the same in the local markets. I humbly submit that the

allegation of the writ petitioners that the 5th respondent is issuing unauthorized permits for the transportation of bamboo under the guise of finished products of bamboo is totally incorrect.

5. I humbly submit that it is relevant to submit at this juncture that our village is Yerukula Colony, Singavaram and prior to December, 2003 there was no "Vana Samrakshana Samiti" in our village and the 5th respondent "Vana Samrakshama Simiti" was constituted in the month of December 2003. I humbly submit that prior to the constitution of the 5th respondent Vana Samrakshana Samiti the villagers of our village used to get permits from Labour Contract Society, Santhajuturu, Bandi Atmakur Mandal rep. by its President, Smt. Tulasammam and after the constitution of our Vana Samrakshana Samithi we stopped approaching Smt.Tulasamma and the petitioners and Smt.Tulasamma is a close relative of Sri Kamireddy Nageswara Reddy, 4th petitioner herein and Sri Shaik Mahaboob Saheb, 1st petitioner herein and Smt.Tulasamma are partners in a B.Ed. College at Erraguntla, Kadapa District. I humbly submit that because of the constitution of the 5th respondent Vana Samrakshana Samithi as our villagers are not approaching Smt.Tulasamma for any permits, she is not getting sufficient income and in view of the same, she got the present writ petition filed through the petitioners herein. It is also relevant to submit that the 4th petitioner herein prior to filing the present writ petition asked me on a number of occasions to obtain permits from Tulasamma and to close our Vana Samrakshana Samithi and he also told that if I do the same he would see that high amount of commission would be given to me. I submit that as I did not agree for the said proposal, the present writ petition has been filed by raising unsustainable and untenable contentions and making false allegations. I humbly submit that in view of the steps taken by the authorities, the smuggling could be controlled and in order to defeat the same, the present writ petition has been filed with false and unfounded allegations. Viewed from any angle, now it is manifestly evident that the petitioners herein have miserably failed in making out a case, warranting any interference or indulgence of this Hon'ble Court under Article 226 of the Constitution of India as such the present writ petition is liable to be dismissed and the petitioners are liable to be saddled with exemplary costs."

Petitioner No.1 has filed rejoinder affidavit and reiterated the averments contained in the writ petition to the effect that respondent Nos.1 to 4 are allowing respondent No.5 to carry out non-forestry activities in the forest area.

We have heard learned counsel for the parties and perused the record.

From the pleadings of the parties, it is evident that while the petitioners have alleged

that respondent No.5 is carrying non-forestry activities in the protected forest in utter violation of the statutory provisions contained in the Indian Forest Act, 1927, A.P. Forest Act and Wild Life (Protection) Act, 1972, the official as well as non-official respondents have denied the same. In the affidavits filed on behalf of the respondents, it has been categorically averred that respondent No.5 is not carrying any non-forestry activity in the protected forest and that the bamboos are being removed from the degraded forest. It has also been averred that the department has allotted Compartment No.598 in Nandyal Extension-II Reserve Forest in Bandi Atmakur Range to respondent No.5 which is outside G.B.M. Sanctuary area and the Samithi members are allowed to remove bamboos only from the earmarked forest area. It is thus evident that there is a serious dispute between the parties on the issue of the alleged non-forestry activity undertaken by respondent No.5 in the reserve forest area. This disputed question can be decided only on the basis of evidence, oral and documentary, which the parties may produce before an adjudicating forum and the present one is not a case of exceptional category in which the High Court should undertake exercise of recording evidence.

For the reasons mentioned above, the writ petition is dismissed with liberty to the petitioners to avail remedy by filing civil suit.

G.S. SINGHVI, C.J.

8th February, 2006.

G. BHAVANI PRASAD, J.

ARS / svs